

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICARE ADMINISTRATIVE
APPEALS**

ALJ Hearing Process



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EXECUTIVE SUMMARY

PURPOSE

To evaluate the administrative law judge appeals process for Medicare Part B and Medicare Part A fee-for-service claims.

BACKGROUND

If an intermediary or a carrier denies payment for a claim, a provider or a beneficiary may appeal the denial. The appeal procedure for Part A and Part B claims is different.

Regardless of the procedural route, however, providers and beneficiaries may appeal to HCFA contractors, Administrative Law Judges, and the Departmental Appeals Board of the Department of Health and Human Services.

The first step in a beneficiary or provider appeal is a request for a reexamination of a denied claim. The request, called a reconsideration, is made to intermediaries for Medicare Part A claims. The request is made to carriers for Medicare Part B claims. For Part B claims, the request is called a review.

If a Medicare intermediary upholds a denied Part A claim, the next step is to request a hearing with an Administrative Law Judge. If a Medicare carrier upholds a denied Part B claim, there is an additional level of appeal. This appeal is made to a carrier hearing officer. If the carrier's hearing officer upholds the denial, the appellant may then request a hearing with an Administrative Law Judge.

If an Administrative Law Judge upholds a denied Part A or Part B claim, an appellant may request a review by the Departmental Appeals Board. The Departmental Appeals Board is the final level of administrative appeal.

FINDINGS

Increasing Number and Changing Nature of ALJ Appeals

An increasing number of appeals are being heard by ALJs. In addition, a large percentage of these appeals are reversed and payments made to appellants. Further, although the appeals process was established as a non-adversarial system for beneficiaries, it is now a provider dominated process.

Structural Inconsistencies in the Appeals Process

A number of elements contribute to inconsistencies in the appeals process. The elements include; lack of consistent criteria for contractors and Administrative Law Judges, lack of communication by parties in the appeals system, and lack of precedence of Administrative Law Judge cases.

Non-Adversarial Nature of Administrative Law Judge Hearings

Medicare is not a party to ALJ hearings. Therefore, the non-adversarial structure of the appeals process often requires that Administrative Law Judges serve as fact finders and neutral decision-makers. However, this practice may compromise the neutrality of Administrative Law Judges by forcing them to present Medicare's case at hearings, then decide the case. Parties in the appeals process agree that non-adversarial hearings are a problem.

Minimal Experience and Training of Administrative Law Judges

On average, Administrative Law Judges spend about 8 percent of their time adjudicating Medicare cases. Their focus is on adjudicating Social Security Administration disability cases. Further, Administrative Law Judges receive neither extensive formal nor informal training on Medicare.

RECOMMENDATIONS

Correct structural problems:

- ▶ Separate the administrative appeals process for beneficiaries and providers.
- ▶ Establish adversarial ALJ hearings for provider appeals.
- ▶ Develop and require both Medicare contractors and ALJs to apply the same standards.
- ▶ Develop regulations for conducting Medicare ALJ appeals.
- ▶ Establish a case precedent system for Departmental Appeals Board rulings.
- ▶ Develop thorough, parallel training programs for Medicare contractors and ALJs.
- ▶ Create formal communication and information networks that span the entire appeals environment.

Establish a dedicated ALJ corps: We submit three organizational options for such a corps:

1. Establish an ALJ corps in HHS for Medicare cases.
2. Create a dedicated corps in SSA for Medicare cases.
3. Expand the current Part B cadre of ALJs in SSA to handle all Medicare cases.